

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

**REPORT AND RECOMMENDATION ON  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT AND DEFENDANT'S MOTION TO STRIKE**

Mr. Timothy Clay has sued Officer Anne Folmar under 42 U.S.C. § 1983 for constitutional deprivations surrounding an arrest. Mr. Clay moved for summary judgment against Defendant Folmar.<sup>1</sup> In response, Officer Folmar moved to strike the summary judgment motion or, alternatively, for an extension of time to respond.<sup>2</sup> Both parties' motions would become moot if the presiding district judge adopts the contemporaneous report.

There the undersigned has recommended summary judgment to Defendant Folmar on grounds that Mr. Clay's claim is time-barred. Adoption of that recommendation would moot the Plaintiff's motion for summary judgment, Officer Folmar's motion to strike Mr. Clay's

<sup>1</sup> See Supplemental [sic] Response: Motion for: Summary Judgement [sic] (July 25, 2008).

<sup>2</sup> See Defendant Officer Anne Folmar's Motion to Strike Plaintiff's Motion for Summary Judgment as Premature or Alternative Motion for Extension of Time to Respond (Aug. 11, 2008).

summary judgment motion, and Officer Folmar's alternative request for additional time. As a result, these motions should be denied as moot.

The parties can object to the present report and recommendation. Any such objection must be filed with the Clerk of this Court by April 22, 2009. *See* W.D. Okla. LCvR 72.1. The failure to timely object would foreclose appellate review of the suggested ruling. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *cf. Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

#### STATUS OF THE REFERRAL

The referral is terminated.

Entered this 2nd day of April, 2009.

  
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Robert E. Bacharach  
United States Magistrate Judge